IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1090 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
FIRM OF SAURUSHTRA SALE AGENCY & 1 - Opponent(s)

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Appearance :
Mrs.Falguni Patel,APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MS Tanha Parikh for MR YOGESH S LAKHANI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/01/2007

ORAL JUDGMENT

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order

dated 5.8.95 passed by the learned Chief Judicial Magistrate, Rajkot in Special Criminal Case No.5 of 1984, whereby the learned Judge has acquitted the accused from the offence punishable under Sections 3(k), 18(1)(c) read with Section 29(1)(a) of the Insecticides Act, 1968.

2. The short facts giving rise to this appeal are such that :

That the complainant is serving as Agricultural Inspector from 1.7.81 for the Rajkot district and talukas Padadri, Lodhika, Kotdasangani talukas of Rajkot district from the head quarter at Rajkot. It is his case that on 9.6.83, the complainant collected three packets from the lot of 20 packets of 100 gms., each of Thyram 75% and one sample was sent for analysis and on receiving the analyst report, it was found that the said product was uncertified as the contents were Thyram 56.34% instead of 75%. Thereafter, necessary notice was issued to the firm of the accused and after obtaining necessary sanction, the present complainant filed the present complaint against the accused for violation of Section 3(k) and 18(1)(c) read with Section 29(1)(a) of Insecticides Act, 1968.

3. The statements of the accused were recorded at Exhs.20 and 21 wherein the accused pleaded not guilty and claimed to be tried and, therefore, after recording the evidence and hearing the learned

counsel for both the sides, acquitted the accused for the offences punishable under Sections 3(k) and 18(1)(c) read with Section 29(a) of the Insecticides Act against which the present appeal is filed.

4. Heard Mrs.Falguni Patel, learned APP for the appellant – State and Ms.Tanha Parikh for Mr.Lakhani, learned advocate for the respondents – accused.

5. The judgment is challenged on various grounds mentioned in para 4 of the memo of appeal. Mrs.Falguni Patel, learned APP has taken me through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

7. The learned trial Judge further gave the finding that the evidence becomes dubious and doubtful because of the contrary version of the panch witness, bogus dealer and the investigating officer regarding the entry of the driver of the Matador van in the octroi cabin, because of which serious complications and hurdles are created in the way of prosecution case by the receipt in the Ayat book at Exh.19 and form no.2 at Exh.18.

6. The learned trial Judge, while discussing the issue involved in this case that the percentage of Thyram was 56.34% instead of 75%, has recorded that no specific quantity of the ingredients in such a product mentioned and also that the the insecticides shown in Annexure 1 of the book shown on

behalf of the complainant but the law does not define the ingredients of the said insecticides. It is further discussed that any insecticide or the ingredients of Thyram 75% are not mentioned clearly in the books produced before him. It is the principle of law that if Thyram 75% is determined as insecticides and if any less ingredients are found therein in the analysis, then it can be treated as mis-branded but unless the ingredients are determined clearly, the insecticide cannot be branded as uncertified. No such insecticide by name Thyram 75% is mentioned in the schedule to Section 3(c). By discussing the same, the learned Judge came to the conclusion that the complainant has failed to prove that necessary ingredients of Thyram 75% are determined under the law. Further, there is a bill produced dated 16.5.83 issued by the Central Insecticides and Fertilizers wherein also it is mentioned Thyram 75% S.D., but there is no mention of any such insecticide under the Act.

7. The learned trial Judge, though came to the conclusion that the samples was collected as per the procedure of law, but he discussed the other points and came to the conclusion that the accused cannot be held guilty for the offences punishable under Sections 3(k) and 18(1)(c) and acquitted the accused.

8. In view of the above, I do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement

with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. I am of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

9. In view of the foregoing discussion, the following order is passed.

10. The appeal of the State is dismissed. The bail bond, if any, shall stand discharged.

(Sharad D.Dave,J)

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